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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

RAMOS FELICIANO, ELISEO

ART UNIT	PAPER NUMBER
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2681

13

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/004,346

Applicant(s)

COSSINS ET AL.

Examiner

Eliseo Ramos-Feliciano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2004 and 03 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 33-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 and 49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after revival of abandoned application under 37 CFR 1.137(b). (See Paper No. 8, mailed April 7, 2004). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. See 37 CFR 1.137 (c). Applicant's submission filed on June 30, 2004 and May 3, 2004 has been entered.

Election/Restrictions

2. Newly submitted **claims 33-48** are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: These inventions are distinct and have acquired a separate status in the art. The inventions are distinct, each from the other because the invention originally claimed and the invention of *claims 33-48* are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, the invention of *claims 33-48* has separate utility as subject matter directed to management of distributed database data and file access and retrieval, and retrieval of database data and files from a centralized or remote site. See MPEP § 806.05(d).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution

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on the merits. Accordingly, *claims 33-48* are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Information Disclosure Statement

3. The references listed in the Information Disclosure Statement filed on May 3, 2004 have been considered by the examiner (see attached PTO-1449 form).

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. **Claim 1** is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over *claim 11 of U.S. Patent No. 6,343,290*. Although the

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conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Regarding claim 1 of the instant application, claim 11 of U.S. Patent No. 6,343,290 reads as follows:

"11. A system for managing a network using a processor, the system configured to generate display elements comprising:

geographic elements having geographic characteristics;

network elements having network characteristics and generated for display in relation to the geographic elements;

and

performance elements having performance characteristics and each generated for display proximal to a corresponding network element."

It is evident that the claims are essentially the same. The only difference is that the subject claim of the present application reads "sectored performance elements having sectored performance characteristics" in contrast to the claim cited above which does not include the underlined limitation: "sectored".

However, this difference is deemed to be obvious to a person of ordinary skill in the art at the time the invention was made because a "sectored performance element" is considered to be a subset of the inclusive set represented by "performance element". In the same way that different performance elements can be generated for display, subsets, sections or sectors of those performance elements can also be generated for display. Additionally, in the same way that particular "performance characteristics" correspond to "performance elements", "sectored performance characteristics" also correspond to "sectored performance elements".

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6. **Claim 49** is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over *claim 99 of U.S. Patent No. 6,343,290*. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Regarding claim 49 of the instant application, claim 99 of U.S. Patent No. 6,343,290 reads as follows:

"99. A method for managing a network using a processor comprising:
materializing a graphical interface;
generating for display for the graphical interface a network element; and
generating for display for the graphical interface a performance element having a performance characteristic;
wherein the performance element corresponds to the network element."

It is evident that the claims are essentially the same. The only difference is that the subject claim of the present application reads "sectored performance element having a sectored performance characteristic" in contrast to the claim cited above which does not include the underlined limitation: "sectored".

However, this difference is deemed to be obvious to a person of ordinary skill in the art at the time the invention was made because a "sectored performance element" is considered to be a subset of the inclusive set represented by "performance element". In the same way that different performance elements can be generated for display, subsets, sections or sectors of those performance elements can also be generated for display. Additionally, in the same way that particular "performance characteristics" correspond to "performance elements", "sectored performance characteristics" also correspond to "sectored performance elements".

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7. NOTE: The present specification states that “a sector may include a section or any portion” – page 39, line 12; and that “the performance element may be a sectored performance element” – page 39, lines 19-20. Therefore, according the present specification it is understood that a sectored performance element is a subset of the inclusive set represented by performance element, and may include the set represented by performance element.

Claim Rejections - 35 USC §102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. **Claims 1-32 and 49** are rejected under 35 U.S.C. 102(b) as being anticipated by Sprecher et al. (US Patent Number 5,285,494).

Regarding **claim 1**, Sprecher et al. discloses a system for managing a network; see the title. The system utilizes a processor (inherent) and is configured to generate display elements; see Figures 4-4C and column 3, line 50 to column 4, line 32. As depicted in Figures 4B-4C, the display elements include:

geographic elements (e.g. West L.A.) having geographic characteristics (e.g. located to the west of Los Angeles);

network elements (cell sites/sectors – col. 5, line 59) having network characteristics (e.g. cell site outages and traffic patterns) and generated for display in relation to the geographic elements (column 3, lines 50-56; column 14, lines 25-28 & 32-35); and

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sector performance elements (see the color codes at legend in Figure 4B – column 4, lines 19-22) having sector performance characteristics (e.g. critical, major, minor, ..., normal, etc.), each generated for display proximal to a corresponding network element (see “LEGEND” in Figure 4B, and column 4, lines 13-24). According to the LEGEND Figure 4B exhibits a “NORMAL” condition view. Figure 4C, exhibits a sector view of that in Figure 4B. See also column 5, lines 54-68, column 6, lines 1-5 & 66-68, column 7, lines 60-66.

Regarding **claim 2**, Sprecher et al. discloses everything claimed as applied above (see *claim 1*). In addition, Sprecher et al. discloses a plurality of sector performance elements (e.g. cell site status, such as outages, and traffic patterns) for each network element (e.g. cell sites). Each sector performance element have a corresponding performance characteristic (e.g. critical, major, minor, ..., normal, etc.); see column 3, lines 50-56, column 4, lines 13-24 and Figure 4B, *inter alia*.

Regarding **claim 3**, Sprecher et al. discloses everything claimed as applied above (see *claim 1*). In addition, Sprecher et al. discloses that the network includes at least one member of a group consisting of a first area for which first data may be depicted geographically and a second area for which second data may be depicted with respect to performance attributes for the sector performance elements. Sprecher et al. at least discloses a first area (LA R.O.C.C. – Figure 4B; or WEST LOS ANGELES – Figure 4C) for which first data (LEGEND: critical, major, minor, ..., normal, etc.) may be depicted geographically, see Figures 4B and 4C.

Regarding **claim 4**, Sprecher et al. discloses everything claimed as applied above (see *claim 1*). In addition, Sprecher et al. discloses that the network includes at least one member of a group consisting of a communication network, an oil network, a gas network, a store network, a

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packaging network, and another business network. For example, Sprecher et al. at least discloses a cellular phone network (communication network); see column 1, lines 6-11 & 29-30, column 5, line 60, and column 14, lines 25-28 & 32-35, *inter alia*.

Regarding **claim 5**, Sprecher et al. discloses a system for managing a network; see the title. The system utilizes a processor (inherent) and is configured to generate display elements; see Figures 4-4C and column 3, line 50 to column 4, line 32. As depicted in Figures 4B-4C, the display elements include:

geographic elements (e.g. West LA) having at least one geographic characteristic (e.g. located to the west of Los Angeles);

network elements (cell sites/sectors – col. 5, line 59) each having at least one network characteristic (e.g. cell site outages and traffic patterns) (column 7, lines 14-19, column 14, lines 25-28 & 32-35); and

sectored performance elements (see the color codes at legend 157 in Figure 4B – column 4, lines 19-22) having at least one sectored performance characteristic (e.g. critical, major, minor, ..., normal, etc.), each sectored performance characteristic corresponding to a sectored performance attribute (network usage: traffic; network condition: outages – column 3, lines 50-56; column 7, lines 13-19) and each sectored performance element generated for display for at least one network element (Figure 4B-C).

Regarding **claim 6**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that a plurality of sectored performance elements (color codes at legend in Figure 4B) are generated for display for each network element. See column 4, lines 19-22. For example, any of the color codes (sectored performance elements) can

be applied to a particular network element. In exemplary Figure 4B, WEST LA depicts a normal condition represented as a white or blank circle.

Regarding **claim 7**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that the network includes at least one member of a group consisting of a communication network, an oil network, a gas network, a store network, a packaging network, and another business network. For example, Sprecher et al. at least discloses a cellular phone network (communication network); see column 1, lines 6-11 & 29-30, column 5, line 60, and column 14, lines 25-28 & 32-35, *inter alia*.

Regarding **claim 8**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that at least one network element is representative of at least one member of a group consisting of a communication network element, an oil network element, a gas network element, a store network element, a packaging network element, and another business network element. For example, Sprecher et al. at least discloses a cellular phone network element (communication network element) such as "telephone switches, cellular phone sites and other related elements"; see column 1, lines 6-11 & 29-30, column 5, line 60, and column 14, lines 25-28 & 32-35, *inter alia*.

Regarding **claim 9**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that at least one sector performance characteristic (see LEGEND explained above; e.g. NORMAL) for at least one sector performance element (see color codes explained above) comprises at least one member of a group consisting of a color, a shade, a cross-hatch, a fill, and a shape. See Figures 4B-4C, column 4, lines 19-22.

Regarding **claim 10**, Sprecher et al. discloses everything claimed as applied above (see *claim 9*). In addition, Sprecher et al. discloses that at least one other sector performance characteristic (e.g. MAJOR) for the at least one sector performance element comprises at least one member of a group consisting of a second color, a second shade, a second cross-hatch, a second fill, and a second shape. See Figures 4B-4C, column 4, lines 19-22. For example, compare slash lines (second color, shade, cross-hatch or fill) for MAJOR with back-slash lines for MINOR or dots for CRITICAL, *inter alia*, in Figure 4B.

Regarding **claim 11**, Sprecher et al. discloses everything claimed as applied above (see *claim 9*). In addition, Sprecher et al. discloses that at least one other sector performance characteristic (e.g. MAJOR) for at least one other sector performance element comprises at least one member of a group consisting of a second color, a second shade, a second cross-hatch, a second fill, and a second shape. See Figures 4B-4C, column 4, lines 19-22. For example, compare slash lines (second color, shade, cross-hatch or fill) for MAJOR with back-slash lines for MINOR or dots for CRITICAL, *inter alia*, in Figure 4B.

Regarding **claim 12**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that at least one sector performance element comprises at least a portion of at least one member of a group consisting of a concentric ring, a pie-shape, a circle, and a polygon. See Figures 10 & 13, column 7, lines 40-42, and column 9, lines 51-57.

Regarding **claim 13**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that a plurality of the sector performance elements comprise at least a portion of at least one member of a group consisting of a plurality of

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stacked polygons and a plurality of concentric rings. See Figures 10 & 13, column 7, lines 40-42, and column 9, lines 51-57.

Regarding **claim 14**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that at least one sector performance element comprises a shape, wherein the shape is configured to vary (e.g. circle or diamond – Figure 4C) depending on a value of a corresponding sector performance attribute. (Column 4, lines 13-32 and Figure 10).

Regarding **claim 15**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that at least one sector performance element has a position (location in map, graph or figure), and the position is configured to vary depending on a value of a corresponding sector performance attribute. (Column 4, lines 13-32).

Regarding **claim 16**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that at least one sector performance characteristic of at least one sector performance element is configured to vary (ranging from a normal condition to a critical condition) depending on a value of a corresponding sector performance attribute (e.g. critical condition). (Column 4, lines 13-32).

Regarding **claim 17**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses a setting selector (system configuration module 139) configured to enable configuration of at least one performance level for each sector performance attribute (e.g. network usage as explained above) and to associate a specific sector performance characteristic (e.g. critical) to a specific performance level (particular color

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code). See column 5, lines 6-7, column 7, lines 40-42, column 8, lines 50-61 and column 4, lines 13-32.

Regarding **claim 18**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that the specific sector performance characteristic is generated based on a data attribute (ranging from a normal condition to a critical condition) for the specific performance level. (Column 4, lines 13-32).

As to **claims 19-32**, they are exact corresponding method claims of system *claims 5-18*, respectively. Therefore, they are rejected for the same reasons explained above.

Regarding **claim 49**, Sprecher et al. discloses a method for managing a network (see the title) using a processor (inherent) including:

materializing a graphical interface (156) (see Figure 4B; column 14, line 23, column 15, line 34, column 16, line 41);

generating for display for the graphical interface (156) at least one network element (cell sites/sectors – col. 5, line 59); and

generating for display for the graphical interface (156) at least one sector performance element (see the color codes at legend 157 in Figure 4B – column 4, lines 19-22) having a sector performance characteristic (e.g. critical, major, minor, ..., normal, etc.);

wherein the at least one sector performance element (e.g. color code NORMAL) corresponds to the at least one network element (e.g. cell site WEST LA). (See Figure 4B, column 4, lines 19-22).

Response to Arguments

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10. Applicant's arguments filed June 30, 2004 and May 3, 2004 have been fully considered but they are not persuasive.

11. Applicant argues, with respect to the obviousness-type double patenting rejection, that the differences between claim 1 of the instant application and claim 11 of USPN 6,343,290 are not obvious and requests evidence. In addition, applicant argues individual sectors in a cell site. (See page 10, third paragraph to page 11, first paragraph of arguments filed June 30, 2004).

In response, attention is directed to the present specification that defines sector as follows: "a sector may include a section or any portion" – page 39, line 12. The present specification further defines that "the performance element may be a sectored performance element" – page 39, lines 19-20. Therefore, according the present specification it is understood that a sectored performance element is a subset of the inclusive set represented by performance element, and may include the set represented by performance element. In addition, the claims of the instant application do not link cell sectors with sectored performance elements as argued.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., individual sectors in a cell site) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

12. Applicant argues, with respect to the rejection under 35 USC 102 to claims 1-2, that Sprencher et al. cannot teach network elements having network characteristics and generated for display in relation to the geographic elements, and sectored performance elements having sectored performance characteristics, each generated for display proximal to a corresponding

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network element. Applicant adds that Sprencher does not disclose or teach sector performance elements in addition to the network elements. (See page 11, second paragraph to page 14, last paragraph, especially page 12 first three full paragraphs, of arguments filed June 30, 2004).

In response, attention is directed to Figure 4B, as explained in the rejection above. The network elements can be, for example, cell sites/sectors (see col. 5, line 59) (see also column 14, lines 25-28 & 32-35). The sector performance elements can be, for example the color codes at LEGEND in Figure 4B (see column 4, lines 19-22). The sector performance elements have sector performance characteristics which can be, for example, CRITICAL, MAJOR, MINOR, ..., NORMAL, *inter alia* (see LEGEND in Figure 4B); each generated for display proximal to a corresponding network element (column 4, lines 13-32).

Conclusion

13. Any inquiry concerning this communication from the examiner should be directed to Eliseo Ramos-Feliciano whose telephone number is 703-305-0078. The examiner can normally be reached from 8:00 a.m. to 5:30 p.m. on 5-4/9 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Hudspeth, can be reached on (703) 308-4825. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


ELISEO RAMOS-FELICIANO
PATENT EXAMINER

9-30-04

ERF/erf
September 30, 2004.